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In re Application of  
Fukushima et al.  
Application No. 10/525,096  
PCT No.: PCT/JP03/10047  
Int. Filing Date: 07 August 2003  
Priority Date: 21 August 2002  
Atty. Docket No.: JP-A0330-AM  
For: Preventive Therapeutic Composition  
For Muscular Fatigue, Pulled Muscle  
And Disease Attributed Thereto

DECISION ON  
PETITION UNDER  
37 CFR 1.10(c)

This is in response to the "Petition Under Rule 181 and 182" filed on 19 July 2005, which is being treated under 37 CFR 1.10(c).

### BACKGROUND

This international application was filed on 07 August 2003, claimed an earliest priority date of 21 August 2002, and designated the U.S. The International Bureau communicated a copy of the published international application to the USPTO on 04 March 2004. The 30 month time period for paying the basic national fee in the United States expired at midnight on 22 February 2005 (since 21 February 2005 was a holiday).

On 12 July 2005, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants, requiring the submission of an oath or declaration in compliance with 37 CFR 1.497(a) and (b) and a surcharge under 37 CFR 1.492(e).

### DISCUSSION

Counsel requests "that the National Stage filing date" of this application "be changed from February 22, 2005 to February 18, 2005" on the basis of Express Mail evidence. The correspondence in question, including *inter alia* the Transmittal Letter, the basic national fee, and the English translation of the international application, were accorded a receipt date of 22 February 2005, rather than the 18 February 2005 "filing date" requested by counsel. Under 37 CFR 1.10(c), where a discrepancy can be shown between the filing date accorded to correspondence by the USPTO and the date of deposit as shown as the "date-in" on the "Express Mail" mailing label or other USPS notation, the Commissioner may be petitioned to accord the correspondence a filing date as of the "date-in" or other official USPS notation. The instant petition complies with 37 CFR 1.10(c)(1).

The petition complies with 37 CFR 1.10(c)(2) because an Express Mail mailing label number, EO907648960US, was recorded on a "Certificate of Mailing By 'Express Mail' (37 CFR 1.10)" accompanying the correspondence in question. The original copy of this "Certificate..." is

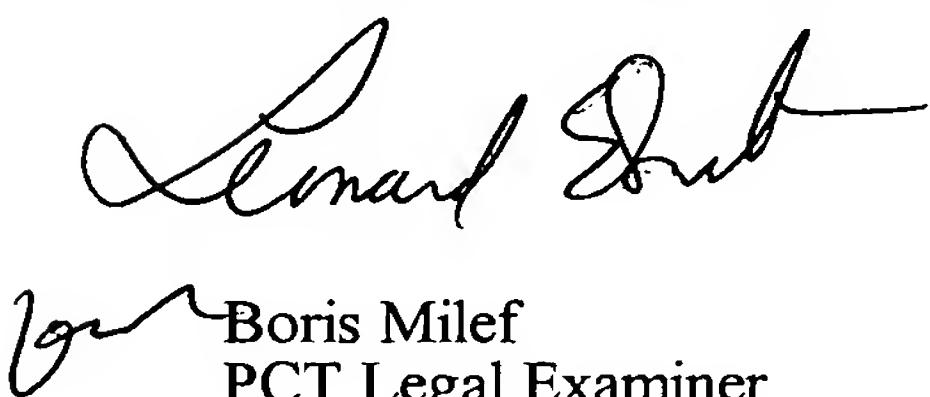
present in the application file, and it itemizes "the following correspondence: National Stage Application, IDS, Check for \$1050, Preliminary Amendment."

The petition also complies with 37 CFR 1.10(c)(3). Counsel has provided a copy of a "CUSTOMER Online Record" which is formatted as an "Express Mail" mailing label and which bears a "Date-In" of "2 18 05." It is not clear whether this "date-in" was entered by a USPS employee. However, the USPS "Track & Confirm" Web page indicates that the "Express Mail" parcel in question was "Enroute, February 18, 2005, 5:30 pm, DULLES, VA 20102." In view of the totality of this evidence, it would be appropriate to conclude that the correspondence in question was in fact deposited with the USPS as "Express Mail" on 18 February 2005.

### CONCLUSION

The petition is **GRANTED** to the extent described above.

This application is being returned to the National Stage Processing Branch for further processing. The period for response to the Notification of Missing Requirements mailed on 12 July 2005, and extendable under 37 CFR 1.136(a), continues to run.



Boris Milef  
PCT Legal Examiner  
PCT Legal Office



George M. Dombroske  
PCT Legal Examiner  
PCT Legal Office  
Tel: (571) 272-3283  
Fax: (571) 273-0459